IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1265 OF 1996

Mahmud @ Babu Ibrahim Jalal ... Petitioner
Vs.
Hasanmiya Abdul Rahiman Havaldar
and Anr. ...Respondents

Shri Vinod Savji i/by Prafulla B. Shah for the Petitioner.
Shri K.V. Saste, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 13, 2005.

ORAL JUDGMENT:

1. On the last date the submissions of the Advocate appearing for the Petitioner and the learned A.P.P. for the State were heard. As none appeared for the Respondent No.1, the Petition was placed today. Today, none appears for the Respondent No.1.

2. This Petition is filed by invoking the provisions of the Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973. The prayer in substance is for quashing the private complaint filed by the Respondent No.1. The order-sheet shows that after notice before admission was issued by this Court, the Petition was adjourned for settlement. Rule was issued on 03rd December, 1997 and interim relief was granted by which the proceeding of the complaint was stayed. A civil suit

pending between the parties was ordered to be heard expeditiously by this Court.

3. Reference will have to be made to the facts of the case in brief. The case of the Respondent No.1 is that he is the owner of immoveable property and Petitioner is a developer. An agreement was executed by the Respondent No.1 on 31st August, 1993 in favour of the Petitioner by which the Petitioner was allowed to develop the property and construct a building. According to the Respondent No.1, it was agreed that the Petitioner was allowed to sale the tenaments and flats in the new building. The case of the Respondent No.1 is that after deducting all the expenditure which is required for the construction, the Petitioner was to pay fifty percent of the net profit to the Respondent No.1. It is stated that it was agreed that certain amounts will be paid by the Petitioner to the Respondent No.1. On the basis of the agreement the Petitioner constructed building and sold two flats in the building. It is the case of the Respondent No.1 that as per the demand made by the Respondent No.1, Petitioner paid a sum of Rs.1,50,000/- by cheque and the said cheque was repeatedly presented to the Bank for encashment and was dishonoured on more than one occasion. It is alleged that by deceiving the

Respondent No.1, the Petitioner obtained a Power of Attorney from the Respondent No.1 on 05th January, 1994 which was cancelled later on by the Respondent No.1. The learned Judicial Magistrate, First Class passed an order under section 156(3) of the Code of Criminal Procedure, 1973. After submission of the report, evidence of the Respondent No.1 was recorded by the learned Magistrate and and thereafter process was issued. In the meanwhile, the Respondent No.1 filed a civil suit against the Petitioner and purchasers of the flats in newly constructed building praying for decree for accounts, share in profit and declaration and injunction. In the said suit, the Petitioner filed a counter claim. It must be noted here that the report submitted by the learned Joint Civil Judge, (S.D.) Alibag, District Raigad on 16th July, 2002 shows that the suit filed by the Respondent No.1 was unconditionally withdrawn on 16th November, 2000.

4. The learned Advocate for the Petitioner submitted that even the complaint and the evidence of the Respondent No.1 clearly discloses that no offence is made out as dispute between the parties is purely a civil dispute. He submitted that no case was made out for offences punishable under sections 406, 417, 418

of the Indian Penal Code.

5. I have considered the submissions. Perusal of the evidence of the Respondent No.1 recorded by the learned Magistrate shows that the cheque issued by the Petitioner in the sum of Rs.01,50,000/- was dishonoured by the Bank in the year 1994. All that the Respondent No.1 has stated in the evidence is that till today the Petitioner has not given any account in respect of the agreement and the development of the property and the Respondent No.1 has not received any profit. No allegations has been made in the deposition regarding the execution of Power of Attorney. The execution of agreement dated 31st August, 1993 is admitted. He stated that he has filed a civil suit for compensation and injunction and the Petitioner has committed breach of contract.

6. Copy of the plaint in the suit filed by the Respondent No.1 is placed on record. The prayer in the suit is for direction to the Petitioner to submit accounts to pay fifty percent of the net profit or in the alternative to pay the sum of Rs.4 lacs to the Respondent No.1. The prayer is that the Power of Attorney executed by the Respondent No.1 stands cancelled and it may be declared that the agreement

executed by the Petitioner in respect of the tenaments in the building are illegal and not binding on the Respondent No.1. There is a counter claim filed by the Petitioner in the said suit.

7. Now as per the report of the learned Trial Judge, the suit has been unconditionally withdrawn on 16th November, 2000. The criminal complaint filed by the Respondent No.1 remained stayed from the year 1997 by virtue of interim order. On plain reading of the complaint and the deposition of the Respondent No.1 recorded by the learned Magistrate in the said complaint, it is obvious that the dispute between the parties was of purely civil nature. Now suit which was ordered to be heard expeditiously has been withdrawn. Apart from the fact that ingredients of the offences under sections 406, 417, 418 and 420 of the Indian Penal Code are not established, no purpose will be served by proceeding with the prosecution. Hence, a case is made out for quashing. Accordingly, rule is made absolute in terms of prayer clause (a) and (b).

JUDGE